

# HOUSE BILL REPORT

## ESB 6296

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**As Passed House:**  
February 28, 2012

**Title:** An act relating to background checks.

**Brief Description:** Modifying background check provisions.

**Sponsors:** Senators Harper, Carrell and Shin; by request of Washington State Patrol.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 2/17/12, 2/21/12 [DP].

**Floor Activity:**

Passed House: 2/28/12, 98-0.

**Brief Summary of Engrossed Bill**

- Authorizes a person to request a copy of his or her full personal criminal history on file at a criminal justice agency.
- Excludes police incident reports from the definition of criminal history record information.
- Harmonizes sections of the Criminal Records Privacy Act and the Child and Adult Abuse Information Act for consistency thereby authorizing that the same information is disseminated under both chapters.

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**HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS**

**Majority Report:** Do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

**Staff:** Yvonne Walker (786-7841).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Criminal history record information (CHRI) or background checks are conducted for employment and licensing decisions and many other purposes including, but not limited to, the security of persons and property.

The Washington State Patrol (WSP) is authorized to disseminate CHRI, without the consent of the subject of the record, under two state statutes: the Criminal Records Privacy Act (chapter 10.97 RCW) and the Child and Adult Abuse Information Act (RCW 43.43.830-43.43.845).

Chapter 10.97 RCW. Under chapter 10.97 RCW, criminal justice agencies may request and receive unrestricted CHRI (that includes: arrests, nonconviction data, conviction records, and sex and kidnapping offender registrations) from the WSP for criminal justice purposes. The public may also request and receive CHRI for noncriminal justice purposes, but it is limited to conviction information only (conviction records where the incident has led to a conviction or other disposition adverse to the subject). In addition, a member of the public may also receive any arrest records from the previous 12 months without disposition and information showing if the subject is a registered sex or kidnapping offender.

Under RCW 43.43.830-845. Under RCW 43.43.830-845, law enforcement agencies, the Office of the Attorney General, prosecuting authorities, and the Department of Social and Health Services may request background check information to aid in the investigation and prosecution of cases of abuse that may have involved a child, a person with a developmental disability, or a vulnerable adult. In addition, under that same statute, requests for CHRI are limited to businesses or organizations licensed in the State of Washington; state agencies; or other governmental entities that educate, train, treat, supervise, house, or provide recreation to developmentally disabled persons, vulnerable adults, or children under 16 years of age.

Criminal history record information disseminated pursuant to RCW 43.43.830-845 includes all convictions, adverse findings, arrest records from the previous 12 months without disposition for solely those offenses classified as crimes against persons, and sex and kidnapping offender registrations. The business or organization making the background check inquiry must notify the applicant who may be offered a position as an employee or volunteer that a background inquiry may be made.

Personal Criminal History Record. A person that believes he or she is the subject of a criminal record maintained by a criminal justice agency may appear in person before that agency and request to see a copy of his or her CHRI. The individual may examine his or her criminal history record but is prohibited from retaining or mechanically reproducing any nonconviction data except for the purpose of a challenge or correction when the person asserts in writing that the criminal history record information is inaccurate or incomplete.

Criminal History Record Information Defined. A "CHRI" includes information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, criminal charges, and dispositions, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The records do not include:

- posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
- original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained;
- court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;
- certain records of traffic violations or offenses maintained by the Department of Licensing;
- records of any aviation violations or offenses as maintained by the Department of Transportation; and
- announcements of executive clemency.

Automatic Fingerprint Information System. The WSP is responsible for developing, maintaining, and operating the statewide automatic fingerprint information system. In 1986 a statute was enacted to create an Automatic Fingerprint Information System Account (AFIS Account) in the custody of the State Treasurer. Funds in the AFIS Account may only be spent for the purpose of purchasing or leasing automatic fingerprint information systems. This account is no longer active.

**Summary of Bill:**

The Criminal Records Privacy Act and the Child and Adult Abuse Information Act are clarified and made consistent. Under both acts, an entity requesting CHRI on a particular subject will receive unrestricted criminal history record information pertaining to any incident occurring within the last 12 months for which the person is currently being processed by the criminal justice system, including the entire period of correctional supervision.

Personal Criminal History Record. A person that believes he or she is the subject of a criminal record may request a full copy of his or her CHRI on file (including nonconviction data) if the criminal justice agency has verified the identity of the person making the request. Criminal justice agencies may impose additional restrictions, including fingerprinting, as necessary to assure the record's security and to verify the identity of the requestor. The agency may charge a reasonable fee for fingerprinting or copying of the personal nonconviction data.

Criminal History Record Information Defined. The definition of CHRI is amended to exclude police incident reports that include intelligence, analytical, or investigative reports and files.

Automatic Fingerprint Information System. The statutory language establishing the AFIS Account in the custody of the State Treasurer is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is agency request legislation. The bill removes the AFIS Account; authorizes a person who is the subject of their own criminal record to actually receive a copy of their own full report; excludes police reports from criminal records, which is current policy; and authorizes the WSP to disseminate the same type of information under both chapters 10.97 and 43.43 of the statute despite who requests the information. This bill will help alleviate some of the burdens on the agency.

(Opposed) None.

**Persons Testifying:** Senator Harper, prime sponsor; and Jason Berry, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.